Office - Supreme Court, U.S.
FILED
MAR 5 1984
ALEXANDER L. STEVAS
CLERK

No. 83-848

In the Supreme Court of the United States

OCTOBER TERM, 1983

IGNACIO DELEON MARTINEZ AND
JESUS CHAVARRIA GARCIA, PETITIONERS

v.

WILLIAM FRENCH SMITH,
ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

REX E. LEE
Solicitor General

STEPHEN S. TROTT
Assistant Attorney General

JOHN F. DEPUE
Attorney

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTION PRESENTED

Whether the court of appeals properly dismissed petitioners' appeals from district court orders denying their motions for expunction of their names and identifying characteristics from an indictment and related court documents.

TABLE OF CONTENTS

Page

Opinion below 1

Jurisdiction 1

Statement 1

Argument 7

Conclusion 15

TABLE OF AUTHORITIES

Cases:

Broadway v. *City of Montgomery*, 530 F.2d 657 ..... 13, 14

Conforte v. *Commissioner*, 692 F.2d 587, application for stay denied, No. A-584 (Jan. 12, 1983) 14

Dawkins v. *Mitchell*, 437 F.2d 646 ..... 13, 14

Doyle v. *United States Department of Justice*, 494 F. Supp. 842, aff'd, 668 F.2d 1365, cert. denied, 455 U.S. 1002 14

Fratus v. *United States*, 496 F.2d 1190 13-14

Molinaro v. *New Jersey*, 396 U.S. 365 ..... 12, 13, 14

Paul v. *Davis*, 424 U.S. 693 ..... 9, 11

Richmond Newspapers, Inc. v. *Virginia*, 448 U.S. 555 10

Shaughnessy v. *Mezei*, 345 U.S. 206 11

Smith, In re, 656 F.2d 1101 ..... 2, 8, 9, 10, 12

United States v. *Briggs*, 514 F.2d 794 ..... 2, 8, 9, 10, 12

Page

Cases—Continued:

United States v. *Cruikshank*, 92 U.S. 542 9

United States v. *McLean*, 720 F.2d 418 10

United States v. *Shelton*, 482 F.2d 848, cert. denied, 414 U.S. 1075 14

Constitution, treaty and statutes:

U.S. Const. Amend. V (Due Process Clause) 8, 11

Treaty of Extradition, May 4, 1978, United States-Mexico, 31 U.S.T. 5061, T.I.A.S. No. 9656 5

Foreign Corrupt Practices Act of 1977:

15 U.S.C. 78dd-2 2

15 U.S.C. 78dd-2(a)(1) 8

15 U.S.C. 78dd-2(a)(3) 8

15 U.S.C. 78dd-2(d)(2) 8

18 U.S.C. 371 2

18 U.S.C. 3184 5

Miscellaneous:

U.S. Attorney's Manual (Feb. 5, 1979) 9

In the Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-848

IGNACIO DELEON MARTINEZ AND
JESUS CHAVARRIA GARCIA, PETITIONERS

v.

WILLIAM FRENCH SMITH,
ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The order of the court of appeals dismissing petitioners' appeals (Pet. App. 24) is not yet reported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 24) was entered on June 16, 1983. A petition for rehearing was denied on August 22, 1983 (Pet. App. 25). The petition for a writ of certiorari was filed on November 21, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. On October 20, 1982, a grand jury in the Southern District of Texas concluded deliberations on a proposed multi-count indictment charging that Crawford Enterprises, Inc., and nine individuals violated the Foreign Corrupt

Practices Act (FCPA), 15 U.S.C. 78dd-2. The indictment charged the defendants with violating the FCPA by using the instrumentalities of interstate commerce in furtherance of the payment of bribes —or the offer, promise, or authorization of payment of bribes — to officials of Petroleos Mexicanos (Pemex), the national oil company of Mexico, in exchange for favorable treatment in connection with proposed purchase orders.[1] Petitioners are Mexican citizens and former officials of Pemex. They were identified in the indictment as the foreign officials who were the recipients or intended recipients of the bribes, which allegedly totalled almost $10 million. DeLeon Martinez (hereinafter DeLeon) was described as the "subdirector of Pemex responsible for purchase of goods and equipment on behalf of Pemex," and Chavarria Garcia (hereinafter Chavarria) was described as the "subdirector of Pemex responsible for the exploration and production of Mexican oil and natural gas." Indictment para. 2. Petitioners, as the foreign targets of the bribery scheme, were not named as defendants in the indictment.

On October 21, 1982, DeLeon moved for injunctive relief to prohibit the grand jury from naming him in any indictment that it might return. Relying upon the Fifth Circuit's decisions in *In re Smith*, 656 F.2d 1101 (1981) and *United States* v. *Briggs*, 514 F.2d 794 (1975), he argued that it was improper for the grand jury to identify him by name in an indictment unless he was formally charged as a defendant. The district court granted a temporary restraining order and directed that any indictment identifying DeLeon be returned under seal unless he was charged as a defendant.

---

[1]Count 1 of the indictment also charged the defendants with conspiracy to violate the FCPA, in violation of 18 U.S.C. 371.

On October 22, 1982, the indictment described above was returned under seal. On October 27, the district court ordered that the indictment be unsealed, with the proviso that DeLeon's name be expunged from it. However, the district court denied DeLeon's subsequent motion to amend this order to require expunction of all references to his job title. The district court also denied Chavarria's motion to intervene in the proceeding for the purpose of obtaining expunction of references to his name. Petitioners then filed an appeal from those orders. Nos. 83-2007 and 83-2045 (5th Cir.).

In September 1982, Ruston Gas Turbines Inc., an alleged participant in the bribe scheme, entered a plea of guilty to one count of violating the FCPA, as charged in an information filed by the United States Attorney. On December 13, 1982, petitioners sought expunction of their names and identification of their official positions from the Ruston information. The district court denied relief, and petitioners again appealed. No. 83-2008 (5th Cir.).

On November 16, 1982, the United States Attorney filed an information in the United States District Court for the Southern District of Texas charging the International Harvester Company with conspiracy to violate the FCPA in connection with the same scheme. Again, petitioners sought expunction of their job titles from the information as well as from an offer of proof made in connection with the plea. The district court denied the application insofar as it related to references to their job titles in the information, but ordered that such references be stricken from the offer of proof. Again, petitioners filed an appeal. No. 83-2060 (5th Cir.). All of the appeals were consolidated for briefing and argument in the court of appeals.

2. Although petitioners were not named as defendants in the indictment and informations filed in district court in Texas, petitioners were formally charged by Mexican

authorities with conspiracy and fraud in violation of the Mexican Penal Code arising out of their alleged agreement to accept money from suppliers of Pemex in exchange for favorable treatment. Warrants for their arrest were issued by a Mexican court on March 9, 1983. Because petitioners were believed to be within the United States and residing in Sugarland, Texas, the United States was formally apprised of the charges through diplomatic channels, and a request was lodged by the Mexican Ambassador that they be arrested and held pending extradition to stand trial on the charges. An extradition complaint then was filed in the United States District Court for the Southern District of Texas on behalf of the Mexican government. Mot. to Dis. App. Exh. 1 (Apr. 28, 1983) (Extrad. Compl.).

The Extradition Complaint explained, on the basis of information received from Mexico through diplomatic channels, that Donald Crawford, the head of Crawford Enterprises,[2] controlled the bidding of various American suppliers involved in the bribery scheme and that Grupo Industrial Delta, a Mexican company ostensibly operating as the agent of Crawford Enterprises, was to be used as the conduit for the payments to Pemex officials. Extrad. Compl. para. 4. The Complaint further explained that the evidence to support these charges includes (*ibid.*):

> declarations of witnesses, including those who were principals of Grupo Industrial Delta; documentary evidence consisting both of records from Pemex and records of American companies involved in the activities described above; the results of an audit done of

---

[2]Donald Crawford is one of the individual defendants named in the indictment described at pages 1-2, *supra*.

> Pemex documents; eyewitness examination by Mexican investigators of equipment and machinery purchased; and the results of prior investigations conducted by Mexican prosecutors of, among others, Ricardo Garcia Beltran (a principal of Grupo Delta) and Guillermo Jose Cervera Flores. The documents include Pemex files; invoices and checks to and from Pemex, the American companies involved and Grupo Delta; bank statements, signature cards, cancelled checks and other records showing transfers of money; and records of the various American companies involved which show that money was included in bids made to Pemex for various Pemex officials, including Ignacio DeLeon Martinez and Jesus Chavarria Garcia.

The Complaint further stated that petitioners had "fled outside the boundaries of Mexico" and were within the United States in Houston or its surrounding suburbs, and requested that warrants be issued for their arrest pursuant to 18 U.S.C. 3184 to initiate proceedings for their surrender to Mexico in accordance with the Treaty of Extradition, May 4, 1978, United States-Mexico, 31 U.S.T. 5061, T.I.A.S. No. 9656.

On March 25, 1983, the district court entered an order directing issuance of warrants for petitioners' arrest and confinement until their transfer to Mexico could be arranged (Mot. to Dis. App. Exhs. 2-4). However, when federal and local law enforcement personnel attempted to execute the warrants at residences owned by petitioners, they were not present. After further efforts to apprehend DeLeon and Chavarria within the United States proved unsuccessful, the government filed a Motion in the court of appeals on April 28, 1983, to dismiss petitioners' appeals from the district court's ruling on the expunction matters on the ground that petitioners were fugitives from justice. The government stated in its Motion (at 5) that Mexican authorities had informed the Justice Department attorney responsible for the Pemex bribery prosecution that they had been

unsuccessful in worldwide efforts to locate petitioners and that they were investigating reports that petitioners were hiding in Spain. In their response to the Motion, petitioners did not account for their whereabouts or deny that they had failed to surrender in accordance with the outstanding warrants. Instead, they argued, inter alia, that the government's assertions that they were fugitives were hearsay, that fugitive status in relation to the extradition warrants should not trigger dismissal of their appeals, and that the fugitive dismissal doctrine is inapplicable to civil appeals.

On June 16, 1983, the court of appeals issued an unpublished order dismissing the appeal (Pet. App. 24). Thereafter, petitioners filed a motion for reconsideration and a suggestion for rehearing en banc. In a "Supplement to Record" dated June 30, 1983, they submitted exhibits which they claimed established that, on the date the warrants were issued, they were not in the Southern District of Texas. DeLeon submitted a copy of a Mexican passport showing that he crossed the international boundary into Canada on March 4, 1983. Chavarria submitted an affidavit of his son, Estaban, stating that his father had not been in Houston, Texas, or resided at the house in Sugarland, Texas, since the middle of 1982. Again, however, neither petitioner attempted to account for his whereabouts or controverted the fact that he had not submitted to legal process in Mexico or the United States. In response, the government filed an affidavit of a local police officer stating that on March 8, 1983, he responded to a burglar alarm at DeLeon's home and that DeLeon was then residing there; and that the officer again saw DeLeon at the residence on the evening of March 24, the day before the warrants were issued. The government also filed a statement from the Attorney General of Mexico confirming that both petitioners were still fugitives with respect to the judicial proceedings that had been initiated in

Mexico (see Exh. 1-3). The petition for rehearing was subsequently denied (Pet. App. 25).

ARGUMENT

The decision of the court of appeals to dismiss petitioners' appeal is correct and does not conflict with any decision of this Court or another court of appeals. Nor does the unpublished order below dismissing the appeal in the particular circumstances of this case warrant further review for any other reason.

The legal arguments petitioners sought to present on their appeal are wholly without merit even without regard to their status as fugitives. It clearly was neither improper nor unconstitutional to identify them in the indictments, informations, and offer of proof filed in district court as the recipients or intended recipients of the bribes. But even if petitioners were correct on the merits of their claims, they have no right to litigate those questions now. They are Mexican citizens who are fugitives from the criminal justice system in their own country in connection with charges that are directly related to the FCPA charges in which they were identified in district court in Texas, and they apparently also have departed from this country and hidden themselves elsewhere to avoid detection. In these circumstances, they have no right to invoke the judicial processes of this Nation in a continuing effort to control the form of pleadings and offers of proof in criminal prosecutions brought by the United States. The way for petitioners to vindicate their reputations, if that is their goal, is to return home and stand trial in the courts of their own country. There is no reason to countenance their efforts to accomplish that end in collateral proceedings in the courts of the United States.

1. An essential element of the offenses with which the defendants were charged in district court under the FCPA is that there be a "foreign official" to whom a payment or an

offer, promise, or authorization of payment was made or directed. See 15 U.S.C. 78dd-2(a)(1), (a)(3) and (d)(2). Petitioners are the specific "foreign officials" who satisfy that essential element in this case, and it is beyond dispute that evidence could be introduced at trial to identify them as such. It scarcely can be improper to identify them in the indictment and informations as well.

The Fifth Circuit's prior decisions in *United States* v. *Briggs*, 514 F.2d 794 (1975), and *In re Smith*, 656 F.2d 1101 (1981), are wholly different in this critical respect. In *Briggs*, the court held that it was improper for the grand jury to name several persons, not charged as defendants in the indictment, as "unindicted co-conspirators" and that this naming of them should be expunged from the indictment. The court reasoned that the effect of the grand jury's action was for an impartial, quasi-judicial body formally to charge the persons with a crime without providing them with a forum in which to meet the charges, thereby abdicating what the court believed to be the grand jury's function to shield persons from baseless charges and impermissibly damaging their reputations in violation of the Due Process Clause. 514 F.2d at 800-806. In *In re Smith*, the Fifth Circuit reached a similar result in requiring the expunction from a summary of evidence submitted by the government in connection with a plea of guilty by a corporate defendant to a charge of bribing a purchasing agent of the Army and Air Force Exchange Service of references to payments made to one Smith, who was not involved in the specific count to which the corporation pleaded guilty. The court reasoned that the naming of Smith in a way that did not afford him an opportunity to vindicate his reputation violated his liberty and property rights guaranteed by the Due Process Clause. 656 F.2d at 1105-1107.

The force of the Fifth Circuit decisions upon which petitioners rely is signifcantly undermined by this Court's decision in *Paul* v. *Davis*, 424 U.S. 693 (1976), which was decided after *Briggs* and which was not even cited in *In re Smith*. In *Paul* v. *Davis*, the Court held that there is no constitutionally protected liberty interest implicated in governmental action imputing criminal behavior to an individual in the absence of some independent action taken against the individual — a factor also missing in *Briggs* and *In re Smith*. Moreover, whatever might be the validity of *Briggs* and *In re Smith* under some other rationale, such as the exercise by the Fifth Circuit of a supervisory power over grand juries or prosecutors, that rationale could not be extended to this case. Here, unlike in *Briggs* and *Smith*, petitioners were not named as "unindicted co-conspirators" in an arguably gratuitous fashion or identified, to no apparent purpose, with criminal activity unrelated to the offense with which the defendants in question were charged. To the contrary, the identification of petitioners as the foreign officials involved was integrally related to the very offenses with which the defendants were charged and, indeed, was an aspect of stating an essential element of those offenses.[3] The grand jury's actions therefore were in furtherance of the purposes of an indictment, recognized in *Briggs* itself (514 F.2d at 800), of giving notice to the defendant, pleading in the litigation, and furnishing the basis for determination of former acquittal or conviction. *United States* v. *Cruikshank*, 92 U.S. 542, 558 (1876). And at least in the absence of countervailing foreign policy or national security concerns, the interest of the public in receiving information so

---

[3]Section 9-11.225 of the U.S. Attorney's Manual (Feb. 5, 1979), cited by petitioners (Pet. 9, 16), also is limited to the naming of an unindicted co-conspirator and is not an absolute bar to the naming of such individuals (*U.S. Attorney's Man.*, Tit. 9 ch. 11, at 9).

central to the offense with which the defendants are charged also must be considered. Cf. *Richmond Newspapers, Inc.* v. *Virginia*, 448 U.S. 555 (1980).

This case also is quite different from *Briggs* and *In re Smith* in another respect that has been recognized by the Fifth Court itself. In a recent decision involving another alleged co-conspirator in the Crawford Enterprises/International Harvester case, the Fifth Circuit held that the principles of *Briggs* and *In re Smith* do not extend to named but unindicted co-conspirators who are subsequently charged in related criminal proceedings. See *United States* v. *McLean*, 720 F.2d 418 (5th Cir. 1983), discussed in petitioners' First Supplemental Memorandum filed in this Court.[4] In *McLean*, the court explained that "the fact of

---

[4]In their Second Supplemental Memorandum (at 3-5, 7), petitioners contend that the district court's January 24, 1984 order in the *Crawford Enterprises* prosecution barring introduction of evidence concerning the transfer of money to Swiss bank accounts (Second Supp. Mem. App. 9) indicates that it was improper to identify them in the indictment. This contention is frivolous. The order excludes certain evidence; it does not and could not constitute a finding that petitioners had no involvement with the alleged bribery scheme. As the affidavit quoted by petitioner states (see Second Supp. Mem. 4 n.2), the prosecutor, through the cooperation of Mexican authorities, has traced money earmarked for petitioners through numerous bank accounts in Mexico and the United States, and $5 million has been traced to Swiss bank accounts that the government believes would be shown by bank records to be in the name of or under the control of petitioners. The basis of the motion of the *Crawford Enterprises* defendants to exclude the evidence pertaining to the Swiss accounts was that because the identity of the persons controlling the Swiss accounts has not been definitively established, the prejudicial impact of references to Swiss bank accounts outweighed the probative value of the evidence tracing the funds to those accounts. The government has noticed an appeal from the district court's granting of that motion. Moreover, there is reason to believe that the attorneys in Switzerland who are resisting the disclosure of records pertaining to ownership and control of the bank accounts are appearing on behalf of petitioners. Any such efforts by petitioners in the courts of Switzerland to frustrate the prosecution in Texas of course are beyond the control of United States courts, but the United States courts themselves need not be open to petitioners' efforts to censor the government's pleadings in the Texas prosecution.

[the alleged co-conspirator's] indictment * * * is critical because the trial of the indictment provides [the alleged co-conspirator] with the required opportunity to put the government to its proof." 720 F.2d at 420. For this reason, the court concluded that the co-conspirator was not entitled to expunction of his name from an information that did not formally charge him as a defendant, because "[t]he charges in the indictment and the charges in the information are carved from the same fact pattern and are either identical or closely related" (*ibid.*). Here, petitioners have been charged by Mexican authorities with offenses "carved from the same fact pattern" as the offenses alleged in the *Crawford Enterprises* indictment and the related informations from which they seek to have their names and identifying characteristics expunged, and they therefore likewise have been afforded "the protection of [a] trial" in which to meet the charges against them (*ibid.*). Petitioners, however, have refused to return to Mexico to avail themselves of that opportunity. Accordingly, petitioners' claims that their names and official positions should be expunged is without merit even under the Fifth Circuit's own precedent.

2. Aside from being wholly without substance, the nature of petitioners' claims on the merits also makes it clear that the court of appeals properly dismissed their appeals. Even if one assumes, notwithstanding *Paul* v. *Davis*, that petitioners would have some interest protected by the Due Process Clause in not being identified in the filings in district court if they were present in the United States, as Mexican citizens who are now (they say) residing outside the United States, they have no present claim to the protection of that Clause. *Shaughnessy* v. *Mezei*, 345 U.S. 206, 212 (1953). Similarly, even if it were to be assumed that petitioners had standing while present in the United States to invoke the Fifth Circuit's holdings in *Briggs* and *In re*

Smith to the extent those holdings rested on the court's supervisory power over the grand jury or the prosecutor, the court of appeals surely was not required to recognize a continuing right in petitioners to invoke the court's supervisory powers over the criminal process once petitioners had left the country. Thus, quite aside from petitioners' fugitive status, their presumably permanent departure from the United States was in itself a sufficient ground on which the court of appeals could conclude that their right to maintain the action had abated and that their appeals accordingly should be dismissed.

3. In any event, petitioners' status as fugitives conclusively "disentitles [them] to call upon the resources of the Court for determination of [their] claims." *Molinaro* v. *New Jersey*, 396 U.S. 365, 366 (1970). Petitioners argue (Pet. 11-13, 16-18) that they should not be regarded as fugitives because they left the United States before the extradition warrants were issued on March 23, 1983, and left Mexico before they were formally charged there on March 9, 1983. There are several flaws in this argument.

First in their initial opposition to the government's motion to dismiss, petitioners did not make any factual submission to rebut the government's contention that they were in Sugarland, Texas, during the week of March 21, 1983, and that they were fugitives in relation to the extradition warrants issued in the Southern District of Texas. Only after the court of appeals dismissed their appeals did petitioners seek to supplement the record with a copy of DeLeon's passport allegedly showing that he had entered Canada from the United States on March 4, 1983, and an affidavit from Chavarria's son stating that Chavarria had not resided in the Sugarland house or visited the Houston area since mid-1972. The court of appeals was not required

to credit or give controlling weight to these belated submissions. Moreover, the fact that DeLeon entered Canada on March 4 does not establish that he remained there for three weeks, and indeed an affidavit of a local official subsequently filed by the government in the court of appeals stated that DeLeon in fact was in the Houston area on March 8 and 24, 1983. The affidavit of Chavarria's son regarding Chavarria's presence in Houston, even if credited, similarly does not support the broad assertion in the certiorari petition (Pet. 7) that he "has not been within the territorial boundaries of the United States or Mexico since mid-summer 1982."

But even if petitioners were correct that they left the United States prior to March 9 or March 25, 1983, the fact remains that they have been formally charged in Mexico[5] and related extradition warrants have been issued in Texas. Petitioners still have not surrendered in either jurisdiction to stand trial on the charges in Mexico, and they therefore are properly regarded as fugitives for purposes of the *Molinaro* doctrine. Cf. *Dawkins* v. *Mitchell*, 437 F.2d 646, 647-648 (D.C. Cir. 1970). The courts of the United States are not required to ignore that fugitive status merely because the criminal charges themselves were not filed against petitioners by the United States government, but by another sovereign (cf. *Broadway* v. *City of Montgomery*, 530 F.2d 657, 659 (5th Cir. 1976); *Fratus* v. *United States*,

---

[5]Although petitioners now object (Pet. 11-12) to the court of appeals' apparent reliance on the pending charges in Mexico, in their opposition to the government's Motion to Dismiss the Appeals (at 8-9) petitioners expressly admitted that such charges had been filed and that warrants had been issued by Mexican authorities for their arrest. Petitioners also fault the court of appeals for not ordering an evidentiary hearing on their fugitive status (Pet. 11-13), but it is not clear how a meaningful hearing could be held even on the factual issues they seek to raise unless petitioners were available to testify and be cross-examined regarding their whereabouts and the timing of their departures.

496 F.2d 1190 (5th Cir. 1974); *United States* v. *Shelton*, 482 F.2d 848 (5th Cir.), cert. denied, 414 U.S. 1075 (1973)), especially in light of the arrest warrants issued by a court of the United States as well. Principles of international comity also caution against resort to United States courts by petitioners in their effort to attack collaterally the charges that have been filed against them by the Mexican government.

Contrary to petitioners' contention (Pet. 15, 18), the *Molinaro* rule providing for dismissal of an appeal based on fugitive status is not rendered inapplicable simply because the instant proceedings are civil in nature (although they of course arise out of criminal cases). Indeed, petitioners concede (Pet. 17-18) that "[t]he applicability of the *Molinaro* rule to civil appeals of matters that are intimately related to or intertwined with a conviction for a crime or escape from confinement has been established" by the decisions in *Doyle* v. *United States Department of Justice*, 494 F. Supp. 842 (D.D.C. 1980), aff'd, 668 F.2d 1365 (D.C. Cir. 1981), cert. denied, 455 U.S. 1002 (1982), and *Conforte* v. *Commissioner*, 692 F.2d 587, 589-590 (9th Cir. 1982), application for stay denied, No. A-584 (Jan. 12, 1983) (Rehnquist, Circuit Justice). See also *Broadway* v. *City of Montgomery*, 530 F.2d at 659; *Dawkins* v. *Mitchell*, 437 F.2d at 648. The decision of the court of appeals in the instant case is consistent with these decisions, for the indictment, informations, and offer of proof from which petitioners seek to have their names and identifying characteristics expunged arise out of the same course of conduct as the outstanding Mexican charges from which they remain at large and therefore are, in petitioners' words, "intimately related to" those charges. Dismissal of petitioners' appeal therefore was an entirely proper course, especially given the nature of the claim they sought to raise.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

REX E. LEE
Solicitor General

STEPHEN S. TROTT
Assistant Attorney General

JOHN F. DEPUE
Attorney

MARCH 1984

DOJ-1984-03